

United States Court of Appeals for the Sixth Circuit

540 Potter Stewart U.S. Courthouse

100 E. Fifth Street

Cincinnati, Ohio 45202-3988

Phone: (513) 564-7000

(FINAL DRAFT).

IN RE: STACEY R. SMITH

USCOA: 20-1716 FROM 17-1022.

APPELLANT,

Blue-Federal

Red-State

Green-Appellant

MCL 600.1701 Neglect or violation of duty or misconduct; power to punish by fine or imprisonment.

TITLE V. EXTRAORDINARY WRITS

Rule 21. **Writs of Mandamus** and Prohibition, and Other Extraordinary Writs

(a) **Mandamus** or Prohibition to a Court: Petition, Filing, Service,

and Docketing.

U.S.C.: AMENDMENT (V).

V.

}

REQUEST FOR A FEDERAL ORDER OF MANDAMUS.

FOEDERATI ORDINE DE MANDAMUS.

DEFENDANT,

28 U.S.C. § 1361 & 1631.

FEDERAL ORDER: HON. PAUL LEWIS MALONEY P-25194; **1:16-CV-1381.**

U.S. District Court; (Jurisdiction for the U.S. Circuit Court of appeals). **AMENDMENT (V).**

MICHIGAN SUPREME COURT – MSC CASE NO.: **161058** – AS DENIED – June 30, 2020.

AMENDMENT (V) – Upheld by Article 17 of the Michigan Constitution of 1963.

IN RE: CONTEMPT LEAD PROSECUTOR CHRIS R. BECKER P-53752 AND DEFENSE COUNSEL JOHN R. BEASON P-34095; HON. GEORGE S. BUTH P-11479 PRESIDING JUDGE: 17TH JUDICIAL CIRCUIT COURT – 07/22/2015. **(BREACH OF THE 17TH JUDICIAL CIRCUIT COURT PLEA AGREEMENT).** **MOTION TO SEAL MSC FILE 161058** – DENIED. – Reason for request for Federal Order of Mandamus..

KENT COUNTY COURTHOUSE.
17TH JUDICIAL CIRCUIT COURT.
180 OTTAWA AVE NW
GRAND RAPIDS, MICHIGAN 49503.

MR. STACEY R. SMITH MOTION AND ORDER TO SHOW CAUSE.
MSC CASE NO.: **161058.** BREACH OF 17TH CIRCUIT PLEA AGREEMENT.
MCOA CASE NO.: **352572.** AT A SESSION HELD ON – 07/22/2015.
APPELLANT CASE NO.: **20-00224-AS.**
LOWER COURT CASE NO.: **14-11012-FH.**

TO NOTIFY: ON JULY 17, 2020 AT 8:30 AM. 17TH JUDICIAL CIRCUIT COURT.

KENT COUNTY COURTHOUSE.
17TH JUDICIAL CIRCUIT COURT.
180 OTTAWA AVE NW
GRAND RAPIDS, MICHIGAN 49503.
TO THE HON.: MARK A. TRUSOCK P-38156. – CHIEF JUDGE.
616-632-5008.
ATTN.: TRUSOCK'S CHAMBERS / COURT CLERK.
[http://mark.trusock@kentcountymi.gov](mailto:mark.trusock@kentcountymi.gov)

Rule 3.606 Contempts Outside Immediate Presence of Court

(A) Initiation of Proceeding. For a contempt committed outside the immediate view and presence of the court, on a proper showing on ex parte motion supported by affidavits, the court shall either : **AFFIDAVIT BY GENERAL INFORMATION SERVICES – FILED IN MICHIGAN SUPREME COURT CASE NO.: 161058.**

(1) order the accused person to show cause, at a reasonable time specified in the order, why that person should not be punished for the alleged misconduct; or

(2) issue a bench warrant for the arrest of the person.

(B) Writ of Habeas Corpus. A writ of habeas corpus to bring up a prisoner to testify may be used to bring before the court a person charged with misconduct under this rule. The court may enter an appropriate order for the disposition of the person.

(C) Bond for Appearance.

(1) The court may allow the giving of a bond in lieu of arrest, prescribing in the bench warrant the penalty of the bond and the return day for the defendant.

(2) The defendant is discharged from arrest on executing and delivering to the arresting officer a bond

(a) in the penalty endorsed on the bench warrant to the officer and the officer's successors,

(b) with two sufficient sureties, and

(c) with a condition that the defendant appear on the return day and await the order and judgment of the court.

(3) Return of Bond. On returning a bench warrant, the officer executing it must return the bond of the defendant, if one was taken. The bond must be filed with the bench warrant.

(D) Assignment of Bond; Damages. The court may order assignment of the bond to an aggrieved party who is authorized by the court to prosecute the bond under MCR 3.604(H). The measure of the damages to be assessed in an action on the bond is the extent of the loss or injury sustained by the aggrieved party because of the misconduct for which the order for arrest was issued, and that party's costs and expenses in securing the order. The remainder of the penalty of the bond is paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

(E) Prosecution on Bond by Attorney General or Prosecutor. **If the court does not order an assignment as provided in (D), it shall order the breach prosecuted by the Attorney General or by the prosecuting attorney for the county in which the bond was taken, under MCR 3.604.** The penalty recovered is to be paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

REFERENCE TO: AFFIDAVIT TO SUPPORT MOTION AND/OR ORDER TO SHOW CAUSE TO CASE NO.: 20-00224-AS.:

MOTION AND/OR ORDER TO SHOW CAUSE.

MCR 3.606 (A).

AT A SESSION ON JULY 17, 2020 8:30 AM

LEAD PROSECUTOR CHRISTOPHER R. BECKER P-53752.
KENT COUNTY PROSECUTOR'S OFFICE.
82 IONIA AVE NW.
SUITE NO.: 450.
GRAND RAPIDS, MICHIGAN 49503
616-632-4710.

DEFENSE COUNSEL JOHN R. BEASON P-34095.
LAW OFFICES OF ATTORNEY JOHN R. BEASON.
15 IONIA AVE NW
SUITE NO.: 530.
GRAND RAPIDS, MICHIGAN 49503
616-458-3791.

appeals@kentcountymi.gov<appeals@kentcountymi.gov>,
beasonjohn@yahoo.com<beasonjohn@yahoo.com>, Stacey Smith<androgenxalon@att.net>.

ELECTRONIC PROOF OF SERVICE FOR SUBMISSION OF EXHIBITS FOR MICHIGAN
SUPREME COURT CASE NO.: 161058.
MR. STACEY R. SMITH
PRO SE INFORMA PAUPERIS.
855 KALAMAZOO AVE SE
GRAND RAPIDS, MICHIGAN 49507.
616-350-5709.

MSC CASE NO.: 161058.
MICHIGAN SUPREME COURT.
925 W. OTTAWA ST. PROOF OF SERVICE TO MSC CASE NO.: 161058.
LANSING, MICHIGAN 48915.
517-373-0120.

NOTICE OF HEARING.

[https://bmccormack@michigan.gov](mailto:bmccormack@michigan.gov)
Chief Justice Bridget M. McCormack.

07/17/2020 AT 8:30 AM

KENT COUNTY PROSECUTORS OFFICE.
ATTENTION: LEAD PROSECUTOR CHRISTOPHER R. BECKER.
SUITE NO.: 450.
82 IONIA AVE NW.
GRAND RAPIDS, MICHIGAN 49503.
616-632-4710.

LAW OFFICES OF ATTORNEY JOHN R. BEASON.
SUITE NO.: 530.
15 IONIA AVE NW.
GRAND RAPIDS, MICHIGAN 49503.
616-458-3791.

LET IT BE KNOWN THAT A SESSION HAS BEEN SET FOR 8:30 AM ON JULY 17, 2020
AT THE KENT COUNTY COURT HOUSE FOR: BREACH OF THE 17TH CIRCUIT
COURT PLEA AND COMPLAINT FOR SUPERINTENDING CONTROL PURSUANT TO
MCR 3.302.

MOTION TO SEAL FILE NO.: 161058 DATED: MARCH 11, 2020.

PROOF OF SERVICE.

I certify under the penalty of perjury of the United States of America and State of Michigan, that
I mailed a true copy of this document to the addresses above on this____FOURTH____ day of
____JUNE_____ 2020 A.D. by US first class mail.

MR. S TACEY R. SMITH MSC CASE NO.: 161058 ELECTRONIC SIGNATURE. 06-04-
2020.

SIGNATURE OF MR. STACEY R. SMITH ONLY.

ISSUES PRESENTED:

The Order from the Sixth Circuit originally in Case No.: 17-1022, literally instructed me to “*launch my direct and collateral attacks on my state court convictions*”, and I have. I have maintained that this matter relies on the Federal Order received from the Honorable Paul Lewis Maloney P-25194 in Case No.: 1:16-CV-1381 – U.S. District Court; stating that I had stated a claim to where his court has Subject-Matter Jurisdiction – **ORIGINAL JURISDICTION** according to 28 U.S.C. § 1361:

- The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or (any agency thereof) to perform a duty owed to the plaintiff.

(Added Pub. L. 87–748, § 1(a), Oct. 5, 1962, 76 Stat. 744.)

The 17TH Judicial Circuit Court in the County of Kent, city of Grand Rapids, Michigan which is Region G-5 of the Judicial District of the Michigan Supreme Court.

PURSUANT TO: **MCL 600.1701**; & for **The Jurisdiction for the U.S. Circuit Court of appeals** would be **28 U.S.C. § 1361 & 1631 – AMENDMENT (V)**.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.1701 Neglect or violation of duty or misconduct; power to punish by fine or imprisonment.
Sec. 1701.

The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

(a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority.

(b) Any breach of the peace, noise, or disturbance directly tending to interrupt its proceedings.

(c) All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner elected or appointed to perform any judicial or ministerial services, for any misbehavior in their office or trust, or for any (willful neglect or violation of duty), for disobedience of any process of the court, or any lawful order of the court, or any lawful order of a judge of the court or of any officer authorized to perform the duties of the judge.

(d) Parties to actions for putting in fictitious bail or sureties or for any deceit or abuse of the process or proceedings of the court.

(e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid.

(f) Parties to actions, attorneys, counselors, and all other persons for disobeying or refusing to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance.

(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court.

(h) All persons for assuming to be and acting as officers, attorneys, or counselors of any court without authority; for rescuing any property or persons that are in the custody of an officer by virtue of process issued from that court; for unlawfully detaining any witness or party to an action while he or she is going to, remaining at, or returning from the court where the action is pending for trial, or for any other unlawful interference with or resistance to the process or proceedings in any action.

(i) All persons who, having been subpoenaed to appear before or attend, refuse or neglect to obey the subpoena, to attend, to be sworn, or when sworn, to answer any legal and proper interrogatory in any of the following circumstances:

(i) As a witness in any court in this state.

(ii) Any officer of a court of record who is empowered to receive evidence.

(iii) Any commissioner appointed by any court of record to take testimony.

(iv) Any referees or auditors appointed according to the law to hear any cause or matter.

(v) Any notary public or other person before whom any affidavit or deposition is to be taken.

(j) Persons summoned as jurors in any court, for improperly conversing with any party to an action which is to be tried in that court, or with any other person in regard to merits of the action, or for receiving communications from any party to the action or any other person in relation to the merits of the action without immediately disclosing the communications to the court.

(k) All inferior magistrates, officers, and tribunals for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law after the cause or matter has been removed from their jurisdiction.

(l) The publication of a false or grossly inaccurate report of the court's proceedings, but a court shall not punish as a contempt the publication of true, full, and fair reports of any trial, argument, proceedings, or decision had in the court.

(m) All other cases where attachments and proceedings as for contempt have been usually adopted and practiced in courts of record to enforce the civil remedies of any parties or to protect the rights of any party.

History: 1961, Act 236, Eff. Jan. 1, 1963 ;-- Am. 1987, Act 99, Imd. Eff. July 6, 1987 ;-- Am. 2005, Act 326, Imd. Eff. Dec. 27, 2005

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Addressed to the Michigan Supreme Court;

M.C.R. 3.302 AND 3.305 – Superintending Control and Mandamus Against a State Official Should have been persuaded by the understanding of the interpretation of U.S. District Judge Paul Lewis Maloney P-25194 indicating that I stated a claim to where his court has Subject-Matter Jurisdiction. (Chief Justice what does this mean to the Supreme Court)? What does it mean when 28 § U.S.C. 1631 when it indicates the District Courts having ORIGINAL JURISDICTION IN ANY CLAIM IN THE NATURE OF MANDAMUS? Was this considered and how was this considered Chief Justice? **28 § U.S.C. 1631 and 1361** – Why does a (SEPERATION OF POWERS) justify the dissuade of all the justices?

In an effort for non-compliance and enforcement of the breach to the 17TH Judicial Circuit Court Plea Agreement. Also, the **Honorable Mark A. Trusock P-38156** indicated in his Order that my relief is a – “**Motion for Relief of Judgment**” which is filed in all courts. Why would the Chief 17TH Circuit Court Judge render that as an order and “**Motion for Relief of Judgment**” remains “**unheard**”, or issued by Judge Trusock?

Why would Judge Trusock refrain from issuing the **Motion and/or Order to Show Cause** with the affidavit from Fed EX Air clearly is verification of the **Breach in the 17TH Judicial Circuit Court Plea Agreement**?

Chief Justice Bridget M. Mc Cormack, why would the Michigan Supreme Court not support in question of this **visible infringement**? Would this not confirm to me that the support of my right to freedom is on a continuation and perpetuating depravity of my inherited personal freedom? While indicating in the Michigan Supreme Court under General Jurisdiction could have honored the Motion for Relief of Judgment in support of his decision but did not. Why? Why, Chief Justice, would it not be obvious to you at just a glance at my litigation and at least queries it as being odd enough to allow a liberal judicial review?

Why wouldn't the Justices be persuaded to liberally verify EXHIBIT (D) in the submitted

brief in comparison to Exhibit (A)? Why would the Justices not agree with the U.S. District Judge Paul Lewis Maloney P-25194 interpretation of the PLAINTIFF, IN RE, stating a claim to were his court has Subject-Matter Jurisdiction? How does the Michigan Supreme Court interpret this as it may apply to [AMENDMENT \(V\)](#) and Article 17 of the Michigan Constitution of 1963? The PLAINTIFF, IN RE's, basis in U.S. District Court Case No: [1:16-CV-1381](#) was pursuant to [28 § U.S.C. 1631 and 1361](#) and the [Michigan Supreme Court has the authority under MCR 3.302 to support this Subject-Matter Jurisdiction under Superintending Control.](#) Why did the Justices NOT elaborate as to why they were not persuaded in writing in response back to PLAINTIFF, IN RE, out of courtesy and respect??

[MCL 600.4401 \(1\)](#): In conjunction with [28 U.S.C. 1361 & 1631](#); =equals ([Superintending Control](#)).

MR. STACEY R. SMITH - HONOURIS CAUSA - AD HONOREM.

• STATE OF MICHIGAN.

FOR THE 17TH JUDICIAL CIRCUIT COURT.

FOR THE COUNTY OF KENT.

CIVIL CASE NO.: 20-00224-AS.

HON.: MARK TRUSOCK P-38156.

LOWER COURT CASE NO.: 14-11012-FH

MCA CASE NO.: 336537.

U.S. DISTRICT COURT CASE NO.: 1:16-CV-1381.

U.S. COURT OF APPEALS CASE NO.: 17-1022.

U.S. DEPARTMENT OF JUSTICE REFERENCE NO.: (3749088).

JUDICIAL TENURE COMMISSION NO.: 16-2235.

ATTORNEY GRIEVANCE COMMISSION NO: 16-1551.

IN RE: STACEY R SMITH

APPELLANT,

MOTION TO CITE:

V.

BRADY V. MARYLAND.

AND TABLE OF AUTHORITIES.

LEAD PROSECUTOR CHRIS BECKER P-53752.

DEFENSE COUNSEL JOHN R. BEASON P-34095.

_____/

FOR A SESSION DATED FOR: **February 07, 2020, 2PM**

Reference to: COMPLAINT FOR SUPERINTENDING CONTROL MCR 3.302.

AND ORDER TO SHOW CAUSE FOR BREACH OF PLEA AGREEMENT.

**AT A SESSION HELD IN:
THE 17TH JUDICIAL CIRCUIT COURT
DATED 07/22/2015.**

**NON-PUBLISHED S.O.R.A.
REGISTRATION.
BREACH OF PLEA AGREEMENT.**

State of Michigan.
17th Circuit Court.
180 Ottawa Ave NW.
Grand Rapids, Michigan 49503.
616-632-5220.

—

PEOPLE OF THE STATE OF MICHIGAN AND THE UNITED STATES OF AMERICA.

STATE OF MICHIGAN HON.: J. JOSEPH ROSSI. (P-53941).
LEAD PROSECUTOR CHRISTOPHER R. BECKER.
82 IONIA AVE NW
SUITE NO.: 450.
GRAND RAPIDS, MICHIGAN 49507
616-632-4710.

MCR 7.211 (C) (9) – A motion to seal

Appellant case no: 336537

and lower court case no: 14-11012-FH in

WHOLE.

PLAINTIFF,

COUNTS 1-3 MCL 750.520 (C) (1) (H)
(PLEA) COUNTS 4-5 MCL 750.520 (E)
SENTENCING DATE: 07/22/15.

COA CASE NO.: 336537
U.S. DISTRICT: 1:16-CV-1381
CCA CASE NO.: 17-1022
DOJ REFERENCE: 3749088
JTC REFERENCE: 16-22385
AGC REFERENCE: 16-1551

LOWER COURT: 14-11012-FH

33°

EXPARTE REQUEST FOR JUDICIAL REVIEW.

28 § U.S.C. 1631.

V.

} **MOTION TO CITE BRADY V. MARYLAND 373 U.S. 83 (1963).**

MR. STACEY R. SMITH
855 KALAMAZOO AVE SE
GRAND RAPIDS, MICHIGAN 49507.
616-350-5709.

MOTION FOR RESPONSE BY
PROSECUTOR MCR 6.506.
MCR 6.419 (A).
MCR 7.211 (7) & (9).
MCR 6.502

MCR 6.504 (B) (4)
MCR 6.508 (C): EVIDENTIARY HEARING.
MCR 6.508 (D): ENTITLEMENT TO RELIEF.

DEFENDANT, ON APPEAL; POST APPEAL RELIEF.

_____/

ENTERING THE PLAINTIFF, IN THE **CIVIL CASE NUMBER 20-00224-AS** and, IN RE, THE
APPELLANT IN CASE NO.: 336537 and 17-1022 HEREBY CITING BRADY V. MARYLAND 373 U.S. 83
(1963):

U.S. Supreme Court

Brady v. Maryland, 373 U.S. 83 (1963)

Brady v. Maryland

No. 490

Argued March 18-19, 1963

Decided May 13, 1963

373 U.S. 83

CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Opinion of the Court by MR. JUSTICE DOUGLAS, announced by MR. JUSTICE BRENNAN.

Petitioner and a companion, Boblit, were found guilty of murder in the first degree and were sentenced to death, their convictions being affirmed by the Court of Appeals of Maryland. 220 Md. 454, 154 A.2d 434. Their trials were separate, petitioner being tried first. At his trial, Brady took the stand and admitted his participation in the crime, but he claimed that Boblit did the actual killing. And, in his summation to the jury, Brady's counsel conceded that Brady was guilty of murder in the first degree, asking only that the jury return that verdict "without capital punishment." Prior to the trial, petitioner's counsel had requested the prosecution to allow him to examine Boblit's extrajudicial statements. Several of those statements were shown to him, but one dated July 9, 1958, in which Boblit admitted the actual homicide, was withheld by the prosecution, and did not come to petitioner's notice until after he had been tried, convicted, and sentenced, and after his conviction had been affirmed.

Petitioner moved the trial court for a new trial based on the newly discovered evidence that had been suppressed by the prosecution. Petitioner's appeal from a denial of that motion was dismissed by the Court of Appeals without prejudice to relief under the Maryland

[\[85\]](#)

Post-Conviction Procedure Act. 222 Md. 442, 160 A.2d 912. The petition for post-conviction relief was dismissed by the trial court, and, on appeal, the Court of Appeals held that suppression of the evidence by the prosecution denied petitioner due process of law, and remanded the case for a retrial of the question of punishment, not the question of guilt. 226 Md. 422, 174 A.2d 167. The case is here on certiorari, 371 U.S. 812. [\[Footnote 1\]](#)

The crime in question was murder committed in the perpetration of a robbery. Punishment for that crime in Maryland is life imprisonment or death, the jury being empowered to restrict the punishment to life by addition of the words "without capital punishment." 3 Md.Ann.Code, 1957, Art. 27, § 413. In Maryland, by reason of the state constitution, the jury in a criminal case are "the Judges of Law, as well as of fact." Art. XV, § 5. The question presented is whether petitioner was denied a federal right when the Court of Appeals restricted the new trial to the question of punishment.

[\[86\]](#)

We agree with the Court of Appeals that suppression of this confession was a violation of the Due Process Clause of the Fourteenth Amendment. The Court of Appeals relied, in the main, on two decisions from the Third Circuit Court of Appeals *United States ex rel. Almeida v. Baldi*, 195 F.2d 815, 33 A.L.R.2d 1407, and *United States ex rel. Thompson v. Dye*, 221 F.2d 763 which, we agree, state the correct constitutional rule.

This ruling is an extension of *Mooney v. Holohan*, [294 U. S. 103](#), 112, where the Court ruled on what nondisclosure by a prosecutor violates due process:

"It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which, in truth, is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."

In *Pyle v. Kansas*, [317 U. S. 213](#), 215-216, we phrased the rule in broader terms:

"Petitioner's papers are *inexpertly* drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. *Mooney v. Holohan*, [294 U. S. 103](#)."

[\[87\]](#)

The Third Circuit, in the *Baldi* case, construed that statement in *Pyle v. Kansas* to mean that the "suppression of evidence favorable" to the accused was itself sufficient to amount to a denial of due process. 195 F.2d at 820. In *Napue v. Illinois*, [360 U. S. 264](#), 269, we extended the test formulated in *Mooney v. Holohan* when we said: "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *And see Alcorta v. Texas*, [355 U. S. 28](#); *Wilde v. Wyoming*,. *Cf. Durley v. Mayo*, [351 U. S. 277](#), 285 (dissenting opinion).

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor, but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted, but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts."

[\[Footnote 2\]](#) A prosecution that withholds evidence on demand of an accused which, if made avail-

[\[88\]](#)

able, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile," to use the words of the Court of Appeals. 226 Md. at 427, 174 A.2d at 169.

The question remains whether petitioner was denied a constitutional right when the Court of Appeals restricted his new trial to the question of punishment. In justification of that ruling, the Court of Appeals stated:

"There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury. It clearly implicated Brady as being the one who wanted to strangle the victim, Brooks. Boblit, according to this statement, also favored killing him, but he wanted to do it by shooting. We cannot put ourselves in the place of the jury, and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's hands that twisted the shirt about the victim's neck. . . . [I]t would be 'too dogmatic' for us to say that the jury would not have attached any significance to this evidence *in considering the punishment of the defendant Brady*."

"Not without some doubt, we conclude that the withholding of this particular confession of Boblit's was prejudicial to the defendant Brady. . . ."

"The appellant's sole claim of prejudice goes to the punishment imposed. *If Boblit's withheld confession had been before the jury, nothing in it could have reduced the appellant Brady's offense below murder in the first degree*. We therefore see no occasion to retry that issue." 226 Md. at 429 430, 174 A.2d at 171. (Italics added.)

[89]

If this were a jurisdiction where the jury was not the judge of the law, a different question would be presented. But since it is, how can the Maryland Court of Appeals state that nothing in the suppressed confession could have reduced petitioner's offense "below murder in the first degree"? If, as a matter of Maryland law, juries in criminal cases could determine the admissibility of such evidence on the issue of innocence or guilt, the question would seem to be foreclosed.

But Maryland's constitutional provision making the jury in criminal cases "the Judges of Law" does not mean precisely what it seems to say. [Footnote 3] The present status of that provision was reviewed recently in *Giles v. State*, 229 Md. 370, 183 A.2d 359, *appeal dismissed*, 372 U. S. 767, where the several exceptions, added by statute or carved out by judicial construction, are reviewed. One of those exceptions material here is that "Trial courts have always passed, and still pass, upon the admissibility of evidence the jury may consider on the issue of the innocence or guilt of the accused." 229 Md. at 383, 183 A.2d at 365. The cases cited make up a long line going back nearly a century. *Wheeler v. State*, 42 Md. 563, 570, stated that instructions to the jury were advisory only, "except in regard to questions as to what shall be considered as evidence." And the court "having such right, it follows of course, that it also has the right to prevent counsel from arguing against such an instruction." *Bell v. State*, 57 Md. 108, 120. And see *Beard v. State*, 71 Md. 275, 280, 17 A. 1044, 1045; *Dick v. State*, 107 Md. 11, 21, 68 A. 286, 290. Cf. *Vogel v. State*, 163 Md. 267, 162 A. 705.

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We usually walk on treacherous ground when we explore state law, [Footnote 4] for state courts, state agencies, and state legislatures are its final expositors under our federal regime. But, as we read the Maryland decisions, it is the court, not the jury, that passes on the "admissibility of evidence" pertinent to "the issue of the innocence or guilt of the accused." *Giles v. State*, *supra*. In the present case, a unanimous Court of Appeals has said that nothing in the suppressed confession "could have reduced the appellant Brady's offense below murder in the first degree." We read that statement as a ruling on the admissibility of the confession on the issue of innocence or guilt. A sporting theory of justice might assume that, if the suppressed confession had been used at the first trial, the judge's ruling that it was not admissible on the issue of innocence or guilt might have been flouted by the jury just as might have been done if the court had first admitted a confession and then stricken it from the record. [Footnote 5] But we

cannot raise that trial strategy to the dignity of a constitutional right and say that the deprival of this defendant of that sporting chance through the use of a

[\[91\]](#)

bifurcated trial (*cf. Williams v. New York*, [337 U. S. 241](#)) denies him due process or violates the Equal Protection Clause of the Fourteenth Amendment.

Affirmed.

Separate opinion of MR. JUSTICE WHITE.

1. The Maryland Court of Appeals declared, "The suppression or withholding by the State of material evidence exculpatory to an accused is a violation of due process" without citing the United States Constitution or the Maryland Constitution, which also has a due process clause. [\[Footnote *\]](#) We therefore cannot be sure which Constitution was invoked by the court below, and thus whether the State, the only party aggrieved by this portion of the judgment, could even bring the issue here if it desired to do so. See *New York City v. Central Savings Bank*, 306 U.S. 661; *Minnesota v. National Tea Co.*, [309 U. S. 551](#). But, in any event, there is no cross-petition by the State, nor has it challenged the correctness of the ruling below that a new trial on punishment was called for by the requirements of due process. In my view, therefore, the Court should not reach the due process question which it decides. It certainly is not the case, as it may be suggested, that, without it, we would have only a state law question, for, assuming the court below was correct in finding a violation of petitioner's rights in the suppression of evidence, the federal question he wants decided here still remains, namely, whether denying him a new trial on guilt as well as punishment deprives him of equal protection. There is thus a federal question to deal with in this Court, *cf. Bell v. Hood*, [327 U. S. 678](#),

[\[92\]](#)

wholly aside from the due process question involving the suppression of evidence. The majority opinion makes this unmistakably clear. Before dealing with the due process issue, it says, "The question presented is whether petitioner was denied a federal right when the Court of Appeals restricted the new trial to the question of punishment." After discussing at some length and disposing of the suppression matter in federal constitutional terms, it says the question still to be decided is the same as it was before: "The question remains whether petitioner was denied a constitutional right when the Court of Appeals restricted his new trial to the question of punishment."

The result, of course, is that the due process discussion by the Court is wholly advisory.

2. In any event, the Court's due process advice goes substantially beyond the holding below. I would employ more confining language, and would not cast in constitutional form a broad rule of criminal discovery. Instead, I would leave this task, at least for now, to the rule making or legislative process after full consideration by legislators, bench, and bar.

3. I concur in the Court's disposition of petitioner's equal protection argument.

MR. JUSTICE HARLAN, whom MR. JUSTICE BLACK joins, dissenting.

I think this case presents only a single federal question: did the order of the Maryland Court of Appeals granting a new trial, limited to the issue of punishment, violate petitioner's Fourteenth Amendment right to equal protection? [\[Footnote 1\]](#) In my opinion, an affirmative answer would

[\[93\]](#)

be required if the Boblit statement would have been admissible on the issue of guilt at petitioner's original trial. This indeed seems to be the clear implication of this Court's opinion.

The Court, however, holds that the Fourteenth Amendment was not infringed because it considers the Court of Appeals' opinion, and the other Maryland cases dealing with Maryland's constitutional provision making juries in criminal cases "the Judges of Law, as well as of fact," as establishing that the Boblit statement would not have been admissible at the original trial on the issue of petitioner's guilt.

But I cannot read the Court of Appeals' opinion with any such assurance. That opinion can as easily, and perhaps more easily, be read as indicating that the new trial limitation followed from the Court of Appeals' concept of its power, under § 645G of the Maryland Post Conviction Procedure Act, Md.Code, Art. 27 (1960 Cum. Supp.) and Rule 870 of the Maryland Rules of Procedure, to fashion appropriate relief meeting the peculiar circumstances of this case, [\[Footnote 2\]](#) rather than from the view that the Boblit statement would have been relevant at the original trial only on the issue of punishment. 226 Md. at 430, 174 A.2d at 171. This interpretation is indeed fortified by the Court of Appeals' earlier general discussion as to the admissibility of third-party confessions, which falls short of saying anything that is dis-positive

[\[94\]](#)

of the crucial issue here. 226 Md. at 427 429, 174 A.2d at 170. [\[Footnote 3\]](#)

Nor do I find anything in any of the other Maryland cases cited by the Court (*ante*, p. 89) which bears on the admissibility *vel non* of the Boblit statement on the issue of guilt. None of these cases suggests anything more relevant here than that a jury may not "overrule" the trial court on questions relating to the admissibility of evidence. Indeed, they are by no means clear as to what happens if the jury in fact undertakes to do so. In this very case, for example, the trial court charged that, "in the final analysis the jury are the judges of both the law and the facts, and the verdict in this case is *entirely* the jury's responsibility." (Emphasis added.)

Moreover, uncertainty on this score is compounded by the State's acknowledgment at the oral argument here that the withheld Boblit statement would have been admissible at the trial on the issue of guilt.

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In this state of uncertainty as to the proper answer to the critical underlying issue of state law, and in view of the fact that the Court of Appeals did not, in terms,

[\[95\]](#)

address itself to the equal protection question, I do not see how we can properly resolve this case at this juncture. I think the appropriate course is to vacate the judgment of the State Court of Appeals and remand the case to that court for further consideration in light of the governing constitutional principle stated at the outset of this opinion. *Cf. Minnesota v. National Tea Co.*, [309 U. S. 551](#).

Footnotes

[\[Footnote 1\]](#)

Neither party suggests that the decision below is not a "final judgment" within the meaning of 28 U.S.C. § 1257(3), and no attack on the review-ability of the lower court's judgment could be successfully maintained. For the general rule that "Final judgment in a criminal case means sentence. The sentence is the judgment" (*Berman v. United States*, [302 U. S. 211](#), 212) cannot be applied here. If, in fact, the Fourteenth Amendment entitles petitioner to a new trial on the issue of guilt as well as punishment, the ruling below has seriously prejudiced him. It is the right to a trial on the issue of guilt "that presents a

serious and unsettled question" (*Cohen v. Beneficial Industrial Loan Corp.*, [337 U. S. 541](#), 547) that "is fundamental to the further conduct of the case" (*United States v. General Motors Corp.*, [323 U. S. 373](#), 377). This question is "independent of, and unaffected by" (*Radio Station WOW v. Johnson*, [326 U. S. 120](#), 126) what may transpire in a trial at which petitioner can receive only a life imprisonment or death sentence. It cannot be mooted by such a proceeding. *See Largent v. Texas*, [318 U. S. 418](#), 421-422. *Cf. Local No. 438 v. Curry*, [371 U. S. 542](#), 549.

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Judge Simon E. Sobeloff, when Solicitor General, put the idea as follows in an address before the Judicial Conference of the Fourth Circuit on June 29, 1954:

"The Solicitor General is not a neutral; he is an advocate, but an advocate for a client whose business is not merely to prevail in the instant case. My client's chief business is not to achieve victory, but to establish justice. We are constantly reminded of the now classic words penned by one of my illustrious predecessors, Frederick William Lehmann, that the Government wins its point when justice is done in its courts."

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See Dennis, Maryland's Antique Constitutional Thorn, 92 U. of Pa.L.Rev. 34, 39, 43; Prescott, *Juries as Judges of the Law: Should the Practice be Continued*, 60 Md.St.Bar Assn. Rept. 246, 253 254.

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For one unhappy incident of recent vintage *see Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, [309 U. S. 4](#), that replaced an earlier opinion in the same case, 309 U.S. 703.

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"In the matter of confessions, a hybrid situation exists. It is the duty of the Court to determine from the proof, usually taken out of the presence of the jury, if they were freely and voluntarily made, etc., and admissible. If admitted, the jury is entitled to hear and consider proof of the circumstances surrounding their obtention, the better to determine their weight and sufficiency. The fact that the Court admits them clothes them with no presumption for the jury's purposes that they are either true or were freely and voluntarily made. However, after a confession has been admitted and read to the jury, the judge may change his mind and strike it out of the record. Does he strike it out of the jury's mind?"

Dennis, Maryland's Antique Constitutional Thorn, 92 U. of Pa.L.Rev. 34, 39. *See also Bell v. State, supra*, 57 Md. at 120; *Vogel v. State*, 163 Md. at 272, 162 A. at 706 707.

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Md. Const., Art. 23; *Home Utilities Co., Inc., v. Revere Copper & Brass, Inc.*, 209 Md. 610, 122 A.2d 109; *Raymond v. State ex rel. Szydlouski*, 192 Md. 602, 65 A.2d 285; *County Comm'rs of Anne Arundel County v. English*, 182 Md. 514, 35 A.2d 135; *Oursler v. Tawes*, 178 Md. 471, 13 A.2d 763.

[\[Footnote 1\]](#)

I agree with my Brother WHITE that there is no necessity for deciding in this case the broad due process questions with which the Court deals at pp. 86-88 of its opinion.

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Section 645G provides in part:

"If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings, and any supplementary orders as to re-arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper."

Rule 870 provides that the Court of Appeals

"will either affirm or reverse the judgment from which the appeal was taken, or direct the manner in which it shall be modified, changed or amended."

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It is noteworthy that the Court of Appeals did not indicate that it was limiting in any way the authority of *Day v. State*, 196 Md. 384, 76 A.2d 729. In that case, two defendants were jointly tried and convicted of felony murder. Each admitted participating in the felony, but accused the other of the homicide. On appeal, the defendants attacked the trial court's denial of a severance, and the State argued that neither defendant was harmed by the statements put in evidence at the joint trial because admission of the felony amounted to admission of guilt of felony murder. Nevertheless, the Court of Appeals found an abuse of discretion and ordered separate new trials on all issues.

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In response to a question from the Bench as to whether Boblit's statement, had it been offered at petitioner's original trial, would have been admissible for all purposes, counsel for the State, after some colloquy, stated: "It would have been, yes."

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373 U.S. 83 (83 S. Ct. 1194, 10 L. Ed.2d 215)

John L. BRADY, Petitioner, v. STATE OF MARYLAND.

No. 490.

Argued: March 18 and 19, 1963.

Decided: May 13, 1963.

- **dissent**, HARLAN, BLACK [\[HTML\]](#)

E. Clinton Bamberger, Jr., Baltimore, Md., for petitioner.

Thomas W. Jamison, III, Baltimore, Md., for respondent.

Opinion of the Court by Mr. Justice DOUGLAS, announced by Mr. Justice BRENNAN.

Petitioner and a companion, Boblit, were found guilty of murder in the first degree and were sentenced to death, their convictions being affirmed by the Court of Appeals of Maryland. 220 Md. 454, 154 A.2d 434. Their trials were separate, petitioner being tried first. At his trial Brady took the stand and admitted his participation in the crime, but he claimed that Boblit did the actual killing. And, in his summation to the jury, Brady's counsel conceded that Brady was guilty of murder in the first degree, asking only that the jury return that verdict 'without capital punishment.' Prior to the trial petitioner's counsel had requested the prosecution to allow him to examine Boblit's extrajudicial statements. Several of those statements were shown to him; but one dated July 9, 1958, in which Boblit admitted the actual homicide, was withheld by the prosecution and did not come to petitioner's notice until after he had been tried, convicted, and sentenced, and after his conviction had been affirmed.

Petitioner moved the trial court for a new trial based on the newly discovered evidence that had been suppressed by the prosecution. Petitioner's appeal from a denial of that motion was dismissed by the Court of Appeals without prejudice to relief under the Maryland Post Conviction Procedure Act. 222 Md. 442, 160 A.2d 912. The petition for post-conviction relief was dismissed by the trial court; and on appeal the Court of Appeals held that suppression of the evidence by the prosecution denied petitioner due process of law and remanded the case for a retrial of the question of punishment, not the question of guilt. 226 Md. 422, 174 A.2d 167. The case is here on certiorari, [371 U.S. 812, 83 S.Ct. 56, 9 L.Ed.2d 54.](#)¹

The crime in question was murder committed in the perpetration of a robbery. Punishment for that crime in Maryland is life imprisonment or death, the jury being empowered to restrict the punishment to life by addition of the words 'without capital punishment.' 3 Md. Ann. Code, 1957, Art. 27, § 413. In Maryland, by reason of the state constitution, the jury in a criminal case are 'the Judges of Law, as well as of fact.' Art. XV, § 5. The question presented is whether petitioner was denied a federal right when the Court of Appeals restricted the new trial to the question of punishment.

We agree with the Court of Appeals that suppression of this confession was a violation of the Due Process Clause of the Fourteenth Amendment. The Court of Appeals relied in the main on two decisions from the Third Circuit Court of Appeals—*United States ex rel. Almeida v. Baldi*, 195 F.2d 815, 33 A.L.R.2d 1407, and *United States ex rel. Thompson v. Dye*, 221 F.2d 763—which, we agree, state the correct constitutional rule.

This ruling is an extension of *Mooney v. Holohan*, [294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791](#), where the Court ruled on what nondisclosure by a prosecutor violates due process:

'It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.'

In *Pyle v. Kansas*, [317 U.S. 213](#), 215—216, 63 S. Ct. 177, 178, 87 L. Ed. 214, we phrased the rule in broader terms:

'Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. *Mooney v. Holohan*, [294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791](#).' The Third Circuit in the Baldi case construed that statement in *Pyle v. Kansas* to mean that the 'suppression of evidence favorable' to the accused was itself sufficient to amount to a denial of due process. 195 F.2d, at 820. In *Napue v. Illinois*, [360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217](#), we extended the test formulated in *Mooney v. Holohan* when we said: 'The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.' And see *Alcorta v. Texas*, [355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9](#); *Wilde v. Wyoming*, [362 U.S. 607, 80 S.Ct. 900, 4 L.Ed.2d 985](#). Cf. *Durley v. Mayo*, [351 U.S. 277, 285, 76 S.Ct. 806, 811, 100 L.Ed. 1178](#) (dissenting opinion).

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.'² A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not 'the result of guile,' to use the words of the Court of Appeals. 226 Md., at 427, 174 A.2d, at 169.

The question remains whether petitioner was denied a constitutional right when the Court of Appeals restricted his new trial to the question of punishment. In justification of that ruling the Court of Appeals stated:

'There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury. It clearly implicated Brady as being the one who wanted to strangle the victim, Brooks. Boblit, according to this statement, also favored killing him, but he wanted to do it by shooting. We cannot put ourselves in the place of the jury and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's hands that twisted the shirt about the victim's neck. * * * (I)t would be 'too dogmatic' for us to say that the jury would not have attached any significance to this evidence in considering the punishment of the defendant Brady.

'Not without some doubt, we conclude that the withholding of this particular confession of Boblit's was prejudicial to the defendant Brady. * * *

'The appellant's sole claim of prejudice goes to the punishment imposed. If Boblit's withheld confession had been before the jury, nothing in it could have reduced the appellant Brady's offense below murder in the first degree. We, therefore, see no occasion to retry that issue.' 226 Md., at 429—430, 174 A.2d, at 171. (Italics added.) If this were a jurisdiction where the jury was not the judge of the law, a different question would be presented. But since it is, how can the Maryland Court of Appeals state that nothing in the suppressed confession could have reduced petitioner's offense 'below murder in the first degree'? If, as a matter of Maryland law, juries in criminal cases could determine the admissibility of such evidence on the issue of innocence or guilt, the question would seem to be foreclosed.

But Maryland's constitutional provision making the jury in criminal cases 'the Judges of Law' does not mean precisely what it seems to say.³ The present status of that provision was reviewed recently in *Giles v. State*, 229 Md. 370, 183 A.2d 359, appeal dismissed, [372 U.S. 767](#), [83 S.Ct. 1102](#), where the several exceptions, added by statute or carved out by judicial construction, are reviewed. One of those exceptions, material here, is that 'Trial courts have always passed and still pass upon the admissibility of evidence the jury may consider on the issue of the innocence or guilt of the accused.' 229 Md., at 383, 183 A.2d, at p. 365. The cases cited make up a long line going back nearly a century. *Wheeler v. State*, 42 Md. 563, 570, stated that instructions to the jury were advisory only, 'except in regard to questions as to what shall be considered as evidence.' And the court 'having such right, it follows of course, that it also has the right to prevent counsel from arguing against such an instruction.' *Bell v. State*, 57 Md. 108, 120. And see *Beard v. State*, 71 Md. 275, 280, 17 A. 1044, 1045, 4 L.R.A. 675; *Dick v. State*, 107 Md. 11, 21, 68 A. 286, 290. Cf. *Vogel v. State*, 163 Md. 267, 162 A. 705.

We usually walk on treacherous ground when we explore state law,⁴ for state courts, state agencies, and state legislatures are its final expositors under our federal regime. But, as we read the Maryland decisions, it is the court, not the jury, that passes on the 'admissibility of evidence' pertinent to 'the issue of the innocence or guilt of the accused.' *Giles v. State*, supra. In the present case a unanimous Court of Appeals has said that nothing in the suppressed confession 'could have reduced the appellant Brady's offense below murder in the first degree.' We read that statement as a ruling on the admissibility of the confession on the issue of innocence or guilt. A sporting theory of justice might assume that if the suppressed confession had been used at the first trial, the judge's ruling that it was not admissible on the issue of innocence or guilt might have been flouted by the jury just as might have been done if the court had first admitted a confession and then stricken it from the record.⁵ But we cannot raise that trial strategy to the dignity of a constitutional right and say that the deprivation of this defendant of that sporting chance through the use of a bifurcated trial (cf. *Williams v. New York*, [337 U.S. 241](#), [69 S.Ct. 1079](#), [93 L.Ed. 1337](#)) denies him due process or violates the Equal Protection Clause of the Fourteenth Amendment.

Affirmed.

Separate opinion of Mr. Justice WHITE.

1. The Maryland Court of Appeals declared, 'The suppression or withholding by the State of material evidence exculpatory to an accused is a violation of due process' without citing the United States Constitution or the Maryland Constitution which also has a due process clause.⁶ We therefore cannot be sure which Constitution was invoked by the court below and thus whether the State, the only party aggrieved by this portion of the judgment, could even bring the issue here if it desired to do so. See *New York City v. Central Savings Bank*, [306 U.S. 661](#), [59 S.Ct. 790](#), [83 L.Ed. 1058](#); *Minnesota v. National Tea Co.*, [309 U.S. 551](#), [60 S.Ct. 676](#), [84 L.Ed. 920](#). But in any event, there is no cross-petition by the State, nor has it challenged the correctness of the ruling below that a new trial on punishment was called for by the requirements of due process. In my view, therefore, the Court should not reach the due process question which it decides. It certainly is not the case, as it may be suggested, that without it we would have only a state law question, for assuming the court below was correct in finding a violation of

petitioner's rights in the suppression of evidence, the federal question he wants decided here still remains, namely, whether denying him a new trial on guilt as well as punishment deprives him of equal protection. There is thus a federal question to deal with in this Court, cf. *Bell v. Hood*, [327 U.S. 678](#), [66 S.Ct. 773](#), [90 L.Ed. 939](#), wholly aside from the due process question involving the suppression of evidence. The majority opinion makes this unmistakably clear. Before dealing with the due process issue it says, 'The question presented is whether petitioner was denied a federal right when the Court of Appeals restricted the new trial to the question of punishment.' After discussing at some length and disposing of the suppression matter in federal constitutional terms it says the question still to be decided is the same as it was before: 'The question remains whether petitioner was denied a constitutional right when the Court of Appeals restricted his new trial to the question of punishment.'

The result, of course, is that the due process discussion by the Court is wholly advisory.

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Mr. Justice HARLAN, whom Mr. Justice BLACK joins, dissenting.

I think this case presents only a single federal question: did the order of the Maryland Court of Appeals granting a new trial, limited to the issue of punishment, violate petitioner's Fourteenth Amendment right to equal protection? ¹In my opinion an affirmative answer would be required if the Boblit statement would have been admissible on the issue of guilt at petitioner's original trial. This indeed seems to be the clear implication of this Court's opinion.

The Court, however, holds that the Fourteenth Amendment was not infringed because it considers the Court of Appeals' opinion, and the other Maryland cases dealing with Maryland's constitutional provision making juries in criminal cases 'the Judges of Law, as well as of fact,' as establishing that the Boblit statement would not have been admissible at the original trial on the issue of petitioner's guilt.

But I cannot read the Court of Appeals' opinion with any such assurance. That opinion can as easily, and perhaps more easily, be read as indicating that the new trial limitation followed from the Court of Appeals' concept of its power, under § 645G of the Maryland Post Conviction Procedure Act, Md.Code, Art. 27 (1960 Cum. Supp.) and Rule 870 of the Maryland Rules of Procedure, to fashion appropriate relief meeting the peculiar circumstances of this case, ²rather than from the view that the Boblit statement would have been relevant at the original trial only on the issue of punishment. 226 Md., at 430, 174 A.2d, at 171. This interpretation is indeed fortified by the Court of Appeals' earlier general discussion as to the admissibility of third-party confessions, which falls short of saying anything that is dispositive of the crucial issue here. 226 Md., at 427—429, 174 A.2d, at 170. ³

Nor do I find anything in any of the other Maryland cases cited by the Court (ante, p. 89) which bears on the admissibility of the Boblit statement on the issue of guilt. None of these cases suggests anything more relevant here than that a jury may not 'override' the trial court on questions relating to the admissibility of evidence. Indeed they are by no means clear as to what happens if the jury in fact undertakes to do so. In this very case, for example, the trial court charged that 'in the final analysis the

jury are the judges of both the law and the facts, and the verdict in this case is entirely the jury's responsibility.' (Emphasis added.)

Moreover, uncertainty on this score is compounded by the State's acknowledgment at the oral argument here that the withheld Boblit statement would have been admissible at the trial on the issue of guilt.⁴

In this state of uncertainty as to the proper answer to the critical underlying issue of state law, and in view of the fact that the Court of Appeals did not in terms address itself to the equal protection question, I do not see how we can properly resolve this case at this juncture. I think the appropriate course is to vacate the judgment of the State Court of Appeals and remand the case to that court for further consideration in light of the governing constitutional principle stated at the outset of this opinion. Cf. *Minnesota v. National Tea Co.*, [309 U.S. 551](#), [60 S.Ct. 676](#), [84 L.Ed. 920](#).

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Neither party suggests that the decision below is not a 'final judgment' within the meaning of [28 U.S.C. 1257\(3\)](#), and no attack on the review-ability of the lower court's judgment could be successfully maintained. For the general rule that 'Final judgment in a criminal case means sentence. The sentence is the judgment' (*Berman v. United States*, [302 U.S. 211](#), [212](#), [58 S.Ct. 164](#), [166](#), [82 L.Ed. 204](#)) cannot be applied here. If in fact the Fourteenth Amendment entitles petitioner to a new trial on the issue of guilt as well as punishment the ruling below has seriously prejudiced him. It is the right to a trial on the issue of guilt 'that presents a serious and unsettled question' (*Cohen v. Beneficial Industrial Loan Corp.*, [337 U.S. 541](#), [547](#), [69 S.Ct. 1221](#), [1226](#), [93 L.Ed. 1528](#)) that 'is fundamental to the further conduct of the case' (*United States v. General Motors Corp.*, [323 U.S. 373](#), [377](#), [65 S.Ct. 357](#), [359](#), [89 L.Ed. 311](#)). This question is 'independent of, and unaffected by' (*Radio Station WOW v. Johnson*, [326 U.S. 120](#), [126](#), [65 S.Ct. 1475](#), [1479](#), [89 L.Ed. 2092](#)) what may transpire in a trial at which petitioner can receive only a life imprisonment or death sentence. It cannot be mooted by such a proceeding. See *Largent v. Texas*, [318 U.S. 418](#), [421—422](#), [63 S. Ct. 667](#), [668—669](#), [87 L. Ed. 873](#). Cf. *Local No. 438 Const. and General Laborers' Union v. Curry*, [371 U.S. 542](#), [549](#), [83 S.Ct. 531](#), [536](#), [9 L.Ed.2d 514](#).

2

Judge Simon E. Sobeloff when Solicitor General put the idea as follows in an address before the Judicial Conference of the Fourth Circuit on June 29, 1954:

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See *Dennis*, *Maryland's Antique Constitutional Thorn*, 92 U. of Pa.L.Rev. 34, 39, 43; *Prescott*, *Juries as Judges of the Law: Should the Practice be Continued*, 60 Md.St.Bar Assn. Rept. 246, 253 254.

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I agree with my Brother WHITE that there is no necessity for deciding in this case the broad due process questions with which the Court deals at pp. 86—88 of its opinion.

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4

In response to a question from the Bench as to whether Bobbitt's statement, had it been offered at petitioner's original trial, would have been admissible for all purposes, counsel for the State, after some colloquy, stated: 'It would have been, yes.'

RESPECTFULLY SUBMITTED:

/s/ MR. STACEY R. SMITH

855 KALAMAZOO AVE SE

GRAND RAPIDS, MICHIGAN 49507.

616-350-5709.

State of Michigan.
In the Michigan Supreme Court.
925 W. Ottawa St.
Lansing, Michigan 48915.
517-373-0120.

IN RE: SMITH IN THE
17TH JUDICIAL CIRCUIT COURT.
HON.: JUDGE GEORGE S. BUTH P-11479. (RETIRED).
180 OTTAWA AVE NW.
GRAND RAPIDS, MICHIGAN 49503.
616--632-5520.

MSC CASE NO.: 161058.

USCOA CASE NO.: 20-1716.

COMPLAINT FOR WRIT OF SUPERINTENDING CONTROL. MCR 3.302.

(GENERAL JURISDICTION): } MOTION TO TRANSFER TO CURE WANT OF

SUBJECT-MATTER JURISDICTION.

. 28 § US C. 1631

AFFIRMED BY FEDERAL JUDGE PAUL LEWIS MALONEY P-25194.

U.S. DISTRICT COURT CASE NO.: 1:16-CV-1381.

MCR 7.211 (C) (9) – A motion to seal
Appellant case no: 336537
And lower court case no: 14-11012-FH in WHOLE.

| | |
|------------------------------------|-----------------------------|
| COUNTS 1-3 MCL 750.520 (C) (1) (H) | COA CASE NO.: 336537 |
| (PLEA) COUNTS 4-5 MCL 750.520 (E) | U.S. DISTRICT: 1:16-CV-1381 |
| SENTENCING DATE: 07/22/15. | CCA CASE NO.: 17-1022 |
| | DOJ REFERENCE: 3749088 |
| | JTC REFERENCE: 16-22385 |
| | AGC REFERENCE: 16-1551 |

} **MOTION FOR RELIEF OF JUDGMENT.**

**MOTION FOR RESPONSE BY
PROSECUTOR MCR 6.506.
MCR 6.419 (A).
MCR 7.211 (7) & (9).
MCR 6.502**

MR. STACEY R. SMITH
855 KALAMAZOO AVE SE
GRAND RAPIDS, MICHIGAN 49507.

MCR 6.504 (B) (4)

616-350-5709.

**MCR 6.508 (C): EVIDENTIARY HEARING.
MCR 6.508 (D): ENTITLEMENT TO RELIEF.**

DEFENDANT, ON APPEAL; **POST APPEAL RELIEF.**

**IN THE UNITED STATES OF AMERICA.
U.S. DISTRICT COURT.
WESTERN DISTRICT OF THE STATE OF MICHIGAN.
IN THE COUNTY OF KENT.**

**CASE NO.: 1411012-FH
BEFORE THE HONORABLE: JUDGE BUTH.
MCL 750.520E
AT A SESSION IN THE 17TH JUDICIAL CIRCUIT COURT**

MICHIGAN COURT OF APPEALS.
State of Michigan Building
350 Ottawa, NW
Grand Rapids, MI 49503-2349
(616) 456-1167

UNITED STATES SIXTH CIRCUIT COURT OF APPEALS.
Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202
Phone: (513) 564-7000

MR. STACEY R. SMITH
PLAINTIFF (PETITIONER).
PRO SE INFORMA PAUPERIS.

Rebuttal and request for pardon.
The Honorable: Governor Rick Snyder.

VS.

} **COMPLAINT FOR WRIT OF MANDAMUS.**

Motion to Intervene in Challenge to Constitutionality of Law.
FED R. APP P.44
Detective Swiercz of the Wyoming Police Department.
28 § U.S.C. 2403.

MOTION TO DISMISS LOC. R 27 (f).
THE HONORABLE GEORGE S. BUTH P-11479.
DEFENDANT. (RESPONDENT).

_____/

State of Michigan.
In the Michigan Supreme Court.
925 W. Ottawa St.
Lansing, Michigan 48915.
517-373-0120.

MR. STACEY R. SMITH
PLAINTIFF (PETITIONER).
PRO SE INFORMA PAUPERIS.

Rebuttal and request for pardon.
The Honorable: Governor Rick Snyder.

VS.

} **COMPLAINT FOR WRIT OF MANDAMUS.**

Motion to Intervene in Challenge to Constitutionality of Law.
FED R. APP P.44
Detective Swiercz of the Wyoming Police Department.
28 § U.S.C. 2403.

MOTION TO DISMISS LOC. R 27 (f).
THE HONORABLE GEORGE S. BUTH P-11479.

DEFENDANT. (RESPONDENT).

_____/

ENTERING THE PLAINTIFF, IN RE, THE APPELLANT IN CASE NO.: 336537 and 17-1022 HEREBY files a Motion to Transfer to Cure Want of Jurisdiction and a Motion to Suppress the Police Statement and the 62A Affidavit for Probable Cause for Felony Complaint from the Wyoming Police Department. With regard to the REQUEST FOR AN ORDER SUA SPONTE QUO WARRANTO; dated March 15, 2017 and the 17TH Circuit Appeal and Counter-Complaint, with an Affirmation for Superintending Control, in conjunction with a Writ of Mandamus Extraordinare with Exhibitions and Exparte Request for Judicial Review pursuant to **MCL 600.4401 (1).** 28 § U.S.C. 1361. AFFIRMED BY:

U.S. DISTRICT JUDGE PAUL L. MALONEY P-25194.

UNDER SUBJECT-MATTER JURISDICTION.

Plaintiff has also filed a Brief of Reasonable Doubt with above court and has requested its consideration.

Whenever a civil action is filed in a court as defined in [section 610 of this title](#) or an appeal, including a **(petition for review of administrative action)**, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, [transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.](#)

(Added [Pub. L. 97-164, title III, § 301\(a\)](#), Apr. 2, 1982, [96 Stat. 55.](#))

The [Order SuaSponte](#) being requested to the **Michigan Supreme Court and to the 17TH Judicial Circuit Court** under a request for Superintending Control through (General Jurisdiction) through the Michigan Supreme Court or the (Criminal Jurisdiction) through the 17thJudicial Circuit Court, with regard to the above letter submitted to the 17TH Judicial Circuit Court. In reference to Subject-Matter Jurisdiction from the Honorable Paul L. Maloney P-25194 of the U.S. District Court of the Western District of Michigan, adopting U.S. District Magistrate Judge Ray Kent's Report and Recommendation, IN PART, pursuant to MCL 600.4401 (1) – Mandamus against a state official; Being, a one (retired judge George S. Buth P-11479) as of January 01, 2017, requesting consideration of a Motion to Modify Sentencing to the newly assign judge of the 17TH Judicial Circuit Court: J. Joseph Rossi P-53941.

The plaintiff, IN RE Stacey R. Smith, has affirmed Superintending Control through the Federal opinion adopted, IN PART, A [FEDERAL ORDER OF MANDAMUS], of U.S. Magistrate Judge Ray Kent's Report and Recommendation by U.S. District Judge Paul L. Maloney with Subject-Matter Jurisdiction pursuant to the Fifth Amendment and of Article 17 of the Michigan Constitution, with regard to the Plaintiff's Brief for Writ of Mandamus Extraordinare with Exhibition and, **(Exparte Request for Judicial Review)**. This is a Motion to Intervene in Challenge to the Constitutionality of Law; FED R. APP P44, 28 § U.S.C 2403, in regards to the deceptive methodology of Detective Phillip Swiercz of the Wyoming Police Department. To where he deliberately curtailed the plaintiff's personal freedom in an effort to mislead, coerce, and entrap the Plaintiff into an involuntary plea due to ineffective counsel and allowing prosecution to railroad the Plaintiff with (insufficient evidence) which

is comprised of the plaintiff's own testimony, as the detective alleges that the plaintiff admitted to the allegations when he did not in direct reference to the police video interview. (EXHIBIT (D)). The police interview, WHEREAS, the detective in turn (lied) on the 62A Affidavit for Probable Cause for Felony Complaint stating that the plaintiff admitted to the charges when he did not in minutes 19:45, 41:35, and 1:01:10 three times and coercion used in minutes 33:48, 37:57, and 1:04:40 of the police interview. With regards to the response from the 6TH Circuit Court of Appeals, by circuit court judges Guy, Rogers, and Donald, had indicated that Mandamus Relief is a drastic remedy, (to which the Appellant believe this is), that may only be invoked in extraordinary situations, (to which the Appellant believes this is). Where the petitioner can show a clear and indisputable right to relief – (With a Motion to Suppress the Police Statement and 62A Affidavit for Probable Cause for Felony Complaint – due to Detective Swiercz's deceptive methodology); and Defense Counsel's failure to subpoena the alleged (BLANK) DVD in question that Detective Swiercz had during the police interview and Defense Counsel failing to subpoena the DVD during a Probable Cause Conference (**TO WHICH DEFENSE COUNSEL FAILED TO HAVE A PROBABLE CAUSE CONFERENCE AND WAIVED IT**) and without Prosecution producing it during (**DEFENSE COUNSEL'S DISCOVERY MOTION**) and moving to suppress the Police Statement and the 62A Probable Cause for Felony Complaint, (**WHICH HAD BEEN FALSIFIED BY DETECTIVE SWIERCZ**), Prosecution would not have a basis to further detain the Appellant. And the Appellant's Defense Counsel failed to move to dismiss pursuant to MCR 6.108 (C) + (D) + (E) which would have resulted in the Appellant's ineffective counsel to move for a dismissal pursuant to MCR 6.110 (F) + (H). The 6TH Circuit also states that, "Smith may raise his outlined challenges in direct collateral attacks on his (state-court convictions)". "And, regardless, we can only compel Federal Officers, Employees, and Agencies to act". This would mean that the "BRIEF for WRIT of MANDAMUS EXTRAODINAIRE with EXHIBITIONS – EXPARTE REQUEST FOR JUDICIAL REVIEW is to be requested to the Michigan Supreme Court under (General Jurisdiction), if not back the 17TH Judicial Circuit Court under (Criminal Jurisdiction), based on the ORDER from the 6TH Circuit Court, and the Michigan Court of Appeals, and the U.S. District Court, through their denial of the Appellant's request for a remedy while stipulating that the remedy that the Plaintiff, IN RE, seeks being available in only two remaining jurisdictions. This is also the same direction that (Retired) Judge George S. Buth's Corporate Counsel is stipulating as well by stating that the Plaintiff, IN RE, "continues to avail himself of said remedy in question".

In the, "Request for an Order SuaSponte", Subject-Matter Jurisdiction pursuant to Federal Judge Paul L. Maloney's opinion stipulates:

Definition – The power of a court, *Michigan Supreme Court or the 17TH Judicial Circuit Court*, to adjudicate a particular type of matter (and provide the remedy demanded).

A court must have jurisdiction to enter a valid, enforceable judgment on a claim. In fact, litigants, through various procedural mechanisms, have the capacity to retroactively challenge the validity of a judgment where jurisdiction is lacking. U.S. District Court Subject-Matter Jurisdiction with regards to that, the Plaintiff, IN RE, has attempted to file – A Federal Question – to the appropriate agency. Also, it stipulates that a court may dismiss a case for lack of subject-matter jurisdiction. Federal Judge Paul Lewis Maloney did not dismiss said case No.: 1:16-cv-1381 for lack of subject-matter jurisdiction, but indicated that in the matter of *Smith V. Buth*, that the Plaintiff (has stated a claim) to which his court has subject-matter jurisdiction. Federal Judge Paul L. Maloney dismissed said case number because, "Federal Courts cannot supervise State Court Judges or Officials", while also stating that the Plaintiff, IN RE, has stated a claim to where his court has Subject-Matter Jurisdiction.

In the Plaintiff, IN RE's, 17TH Circuit Appeal and Counter-Complaint – the Plaintiff, IN RE, has established reasonable doubt with regards to the judicial process in case number 14-11012-FH and warranting Superintending Control of said case number pursuant to MCL 600.4401 (1). The Plaintiff, IN RE, has established self-incrimination violative of the Fifth Amendment as well as Article 17 of the Michigan Constitution of 1963. Detective Phillip Swiercz, Kevin Bramble, Joshua Kuiper, George S. Buth, and John R. Beason are directly responsible for curtailing the Plaintiff's person freedom in direct reference to the Fifth Amendment and Article 17 of the Michigan Constitution.

In regards to Superintending Control pursuant to 28 § U.S.C. 1361, MCL 600.4401 (1), and the formula of the Michigan Court Rules justifies the occurrence and warrant for Superintending Control.

FORMULA OF THE MICHIGAN COURT RULES:

FORMULA:

(PROSECUTION) (DEFENSE COUNSEL)

MCR 6.110 (C1) + (2a) + (2b) + (2c) + (2d) = MCR 6.201 (b2) + (b5) = MCR 6.201 (b2) + (b5)

The above formula should be equal to: MCR 6.201 (J) = VIOLATION.

With regards to the Brief on the Police Statement and regards to the 62A Affidavit for Probable Cause for Felony Complaint; the Plaintiff, IN RE, moves for relief from sentencing pursuant to MCR 6.502, MCR 6.508, MCR 6.509, MCR 6.506, MCR 6.419 (A), MCR 7.211 (7) & (9), and MCR 7.211 (C) (3) (a) for POST APPEAL RELIEF. The basis for this Brief is based on and supported by 28 § U.S.C. 1361 and MCL 600.4401 (1) and ask the court to consider and remit a Motion to Modify Sentencing to the Lead Prosecutor Christopher R. Becker for consideration and for consideration of the newly assigned Judge J. Joseph Rossi of the 17TH Judicial Circuit Court – both in and with the County of Kent here in Grand Rapids, Michigan. Regarding MCR 7.103 (B) (1) (a), the Plaintiff, IN RE, understood no relief being available in the 17TH Judicial Circuit Court, while no response from the 17TH Circuit Court still remains from the Honorable J. Joseph Rossi – The Plaintiff, IN RE, has filed an application for leave to the Michigan Supreme Court to pursue Superintending Control under (GENERAL JURISDICTION) in conjunction with SCAO FORM NO.'S mc263, mc 443, mc235 has also been requested by the Plaintiff, IN RE, to be considered and AFFIRMED.

Pursuant to 28 § U.S.C. 2254 (d) & (2) has established that case number 14-11012-FH had been adjudicated by an unreasonable determination of facts – Please refer to EXHIBITS (A), (C), (D), (E), and (F). 28 § U.S.C. 2254 (E) (2) (A) – Also stipulates that, the claim relies on – (ii) > a factual predicate that could not have been previously discovered, EXHIBIT (A) – the 62A Affidavit for Probable Cause for Felony Complaint discovered by the Plaintiff, IN RE, on 11/14/16 (POST FACTO) after reviewing the lower court case. The Plaintiff, IN RE, HAD NO KNOWLEDGE OF THIS FALSIFIED DOCUMENT, EXHIBIT (A) UNTIL 11/14/16.

WHEREAS, with this the Plaintiff, IN RE, AFFIRMS his request for relief and in turn moves for relief pursuant to:

MCR 7.211 (C) (3) – A motion to affirm Appellant’s Brief.

MCR 7.211 (A) (3) (c) – Trial Court abused its discretion.

MCR 7.211 (C) (6) – A Motion for immediate consideration.

MCR 7.211 (C) (3) (a) – Motion to affirm Appellant’s Brief because of abuse of discretion.

MCR 7.211 (C) (7) – A confession of error by the prosecutor be assumed.

MCR 7.211 (C) (9) – A motion to seal appellant case no: 336537 and lower court case no: 14-11012-FH in
WHOLE.

And a move to exonerate the Appellant.

The Plaintiff, IN RE, has AFFIRMED Superintending Control with this request to AFFIRM above Court Rules.

Respectfully submitted,

MR. STACEY R. SMITH.
APPELLANT.
855 KALAMAZOO AVE SE
GRAND RAPIDS, MICHIGAN 49507.
616-350-5709.

Respectfully submitted:

/s/ Mr. Stacey R. Smith.

FINAL DRAFT.

DISREGARD ALL OTHER CORRESPONDENCE

WITHOUT THIS MARK.

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MOTION TO CITE BRADY V MARYLAND SMITH V BECKER AND BEASON CIVIL SUMMONS AND COMPLAINT
FOR SUPERINTENDING CONTROL STATE OF MICHIGAN LETTER TO J JOSEPH ROSSI P-53941 02-07-20.doc

153kB

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